

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

KAY HARBER

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
 Kimmel & Silverman, P.C.
 30 E. Butler Pike
 Ambler, PA 19002
 (215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug Med. Malpractice <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
---	---	--	---	--	---	--

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C SECTION 1692

VI. CAUSE OF ACTION

Brief description of cause:
Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S)

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation:

926-11

/S/ Craig Thor Kimmel

SIGNATURE OF ATTORNEY OF RECORD

DATE

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2463 Helmsdale Drive, Atlanta, GA 30345

Address of Defendant: 507 Prudential Road, Hershamb, PA 19041

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts

2. FELA

3. Jones Act-Personal Injury

4. Antitrust

5. Patent

6. Labor-Management Relations

7. Civil Rights

8. Habeas Corpus

9. Securities Act(s) Cases

10. Social Security Review Cases

11. All other Federal Question Cases
(Please specify)

15 U.S.C. § 1692

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts

2. Airplane Personal Injury

3. Assault, Defamation

4. Marine Personal Injury

5. Motor Vehicle Personal Injury

6. Other Personal Injury (Please specify)

7. Products Liability

8. Products Liability — Asbestos

9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 9-26-11

Craig Thor Kimmel
Attorney-at-Law

57100
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 9-26-11

Craig Thor Kimmel
Attorney-at-Law

57100
Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

<i>Kay Harber</i>	:	CIVIL ACTION
v.	:	
<i>NCO Financial System, Inc.</i>	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

9/26/11

Date

215-540-8888

Telephone

Craig Thor Kimmel

Attorney-at-law

877-788-2844

FAX Number

Kay Harber

Attorney for

Kimmel@creditlaw.com

E-Mail Address

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

KAY HARBER,)
Plaintiff)
v.)
NCO FINANCIAL SYSTEMS, INC.,)
Defendant)
Case No.:)
COMPLAINT AND DEMAND FOR)
JURY TRIAL)
(Unlawful Debt Collection Practices)

COMPLAINT

KAY HARBER (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant has its corporate headquarters in the Commonwealth of Pennsylvania and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

PARTIES

5. Plaintiff is a natural person residing in Atlanta, Georgia.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. Also, Plaintiff is a person granted a cause of action under the FDCPA. See 15

U.S.C. § 1692k(a) and *Wenrich v. Cole*, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with its corporate headquarters

located at 507 Prudential Road, Horsham, PA 19044.

9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6),

and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors,

heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties.

See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k.

12. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

13. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose and forbids debt collectors from taking such action. The

1 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
2 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
3 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
4 collector may not use any false, deceptive, or misleading representation or means in connection
5 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
6 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
7 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
8 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
9 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
10 connection with the collection of a debt.

12 14. In enacting the FDCPA, the United States Congress found that “[t]here is
13 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
14 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
15 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
16 additionally found existing laws and procedures for redressing debt collection injuries to be
17 inadequate to protect consumers. 15 U.S.C. § 1692b.

18 15. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
19 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
20 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
21 collection practices are not competitively disadvantaged, and to promote consistent State action
22 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

16. At all pertinent times hereto, Defendant was hired to collect a consumer debt and attempted to collect that debt from Plaintiff.

17. Upon information and belief, the debt arose out of transactions that were primarily for personal, family, or household purposes.

18. Beginning in or around June 2011, Defendant constantly and continuously placed collection calls to Plaintiff on her home telephone seeking and demanding payment for an alleged debt.

19. On several occasions, Defendant would contact Plaintiff more than once in a single day.

20. Each time Defendant contacted Plaintiff, it left a voicemail for Plaintiff on her home answering machine.

21. Defendant's messages informed Plaintiff that it was a debt collector and that it was attempting to collect a debt.

22. Defendant's messages instructed Plaintiff to contact it and provided her a phone number in which to contact Defendant.

23. Plaintiff disputes owing any debt to Defendant.

24. Desiring to stop Defendant's repetitive telephone calls and to tell Defendant that they were calling the wrong phone number, on at least one occasion, Plaintiff called the phone number provided by Defendant.

25. However, Plaintiff was unable to speak with any individual; instead, her phone call was sent to a voice mailbox.

26. Upon information and belief, Defendant called Plaintiff multiple times with the

1 intent to harass Plaintiff into paying a debt that she did not owe.

2 27. Defendant failed to investigate or verify contact information prior to and after
 3 calling Plaintiff.

4 28. Defendant failed to update its records to avoid further harassment of Plaintiff.

5 29. The repetitive calls to Plaintiff were intended by Defendant to be disturbing,
 6 harassing, and an invasion of privacy, so that Plaintiff would comply with Defendant's
 7 instructions.

8 **CONSTRUCTION OF APPLICABLE LAW**

9 30. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
 10 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
 11 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
 12 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
 13 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
 14 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

16 31. The FDCPA is a remedial statute, and therefore must be construed liberally in
 17 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
 18 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
 19 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
 20 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
 21 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
 22 2002).

24 32. The FDCPA is to be interpreted in accordance with the "least sophisticated"
 25 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano

1 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
 2 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for
 3 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
 4 and the fact that a false statement may be obviously false to those who are trained and
 5 experienced does not change its character, nor take away its power to deceive others less
 6 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
 7 ensures protection of all consumers, even naive and trusting, against deceptive collection
 8 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
 9 collection notices. Clomon, 988 F. 2d at 1318.

11 **COUNT I**
 12 **DEFENDANT VIOLATED THE**
 13 **FAIR DEBT COLLECTION PRACTICES ACT**

14 33. In its actions to collect a debt, Defendant violated the FDCPA in one or more of
 15 the following ways:

- 16 a. Defendant violated the FDCPA generally;
- 17 b. Defendant violated the FDCPA §1692b(2) when it stated to Plaintiff that it
 18 was attempting to collect a debt;
- 19 c. Defendant violated the FDCPA §1692b(3) when it communicated with
 20 Plaintiff more than once;
- 21 d. Defendant violated the FDCPA §1692c(b) when it communicated with
 22 Plaintiff about another person’s debt;
- 23 e. Defendant violated the FDCPA §1692d when it harassed, oppressed or abused
 24 Plaintiff in connection with the collection of a debt;
- 25 f. Defendant violated the FDCPA §1692d(5) when it caused Plaintiff’s phone to

ring, and engaged Plaintiff in conversation repeatedly or continuously with the intent to annoy, abuse, or harass Plaintiff; and

g. Defendant violated the FDCPA §1692f by using unfair and unconscionable means in connection with the collection of a debt.

WHEREFORE, Plaintiff, KAY HARBER, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, KAY HARBER, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Date: September 26, 2011

By: CTK 3654

Craig Thor Kimmel
Attorney ID No. 57100

Tara L. Patterson

Attorney ID No. 88343

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

Phone: (215) 540-8888

Fax: (877) 788-2864

Email: kimmel@creditlaw.com

Email: tpatterson@creditlaw.com